



IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D1170/17

Not Reportable

In the matter between:

SARS

Applicant

and

Public Servants Association of SA

First Respondent

S Manikam and Others

Second Respondent

Heard: 25th April 2025

Delivered: 10th October 2025

JUDGMENT

MM Govender AJ

ISSUE

[1] This is an application in terms of Rule 41 of the the Rules of the Labour Court In which the Applicant seeks an order declaring that the claim referred by the Respondents under case D 1170/17 has been archived in terms of Rule 69 (2)(b).

[2] The crux of the issue relates to the Registrar's decision to apply the provisions of New Court Rule Rule 7(2) and grant the respondents 15 days to rectify.

The respondents did so within said time frame.

It is the applicants contention that the provisions of new court rule 7(2) did not apply and that the matter had already been archived and therefore the 15 day notice was incorrectly issued by the Registrar.

BACKGROUND

[3] The second and further respondents were employed by the applicant as audit specialists and chartered accountants and occupied Grade 7 on the applicant's grading system.

[3] Said respondents alleged that they were unfairly discriminated against in that they were not allowed a travel allowance granted to Grade 6 employees even though their functions were identical.

[4] The applicant opposed the referral and filed its statement of claim on 26 September

2017. After the close of pleadings on 11 October 2017 the respondent's attorneys requested a pre trial conference. The applicant's attorneys replied on 20 October 2017

requesting a draft of said pre trial minute.

In the absence of a response the applicant's attorneys sent a follow up email on 28 June 2018 but received no response.

[5] The applicants filed an interlocutory application on 18 September 2020 to dismiss the referral in terms of Rule 11 of the Labour Court Rules. The respondents attorneys then responded and forwarded the pre trial minute on 3 November 2020.

This Rule 11 application was then withdrawn by agreement between the parties on 22 November 2021.

[6] The applicant sent the amended minute to the respondents attorneys on 3 December 2021 but did not receive a response.

[7] The applicant then filed a Rule 69 (2) (b) notice of archival in terms of the Rules.

[8] The Registrar of this court replied with a communication confirming that the last document was filed on 22 November 2022. The communication also went on to state that :

“ In terms of the new court rules when a period of three months have elapsed without anything being done the file will automatically be closed and archived in terms of rule

7 (2) therefore you are afforded 15 days to rectify”

[9] The Respondents responded within said 15 days.

The applicant then wrote to the Registrar to distinguish the applicability of Rule 7 and Rule 69. The Registrar replied on 27 January 2025 essentially disagreeing with their contention.

[10] A judicial pre trial notice was issued on 4 February 2025 for a set down before this court on 25 February 2025.

[11] The applicants launched this Rule 41 application on 19 February 2025.

EVALUATION

[12] The primary question is whether by effluxion of time or inactivity by the respondent party that this referral was automatically archived by operation of Rule 69 (2) (b) of the Labour Practice Rules.

[13] Rule 69(2) of the Rules states :

(2) Subject to rule 7 the Registrar must archive a file in the following circumstances :

(a) In the case of motion proceedings, when a period of 6 months has elapsed without any steps been taken from the date of the application or the date on which the last process was filed;...

[14] New labour court rule 7(2) states

(2) If a period of 3 months from the date on which the initiating document is filed, no further documentation is filed or action taken by the initiating party, the file will be automatically closed and archived, provided the registrar has afforded the initiator 15 days notice in writing of the closure and archiving. Any file so archived may be retrieved only in terms of a an order of court, on good cause shown.

[15] In its Heads of Argument the applicant has referred to both the judgments indicated below.

[16] In **November and Others v Bruma Plant Hire (Pty) Ltd** ¹ “ The November judgment’.

In dealing with the import of the words ‘ the Registrar must’

The court held that ...*‘the registrar must’ , this does not in my view impose some or*

other prosecution obligation on the registrar, independent of the parties and especially

the applicant party..... it is not for the registrar to prosecute a matter to finality, which in my view remains squarely the duty of the applicant party’.

[17] The LAC held in **E Tradex Ltd t/a Global Trade Solution v Finch and Others**²

In dealing the importance of strict diligent compliance with court rules and time frames

...upon archiving , in terms of clause 11.2.7 a matter is regarded as lapsed, unless good cause is shown why the application should not be archived or be removed from the archive’

[18] In its Heads of Argument the Respondent disagreed with the November judgment and argued that the Registrar was duty bound to implement the provisions of the Practice Manual.

[19] There are several conflicting judgments on this question

For instance in **Libelo and Others v City of Johannesburg** ³ , the Labour Court took a different view and concluded that the expiry of the six month period in paragraph 16. 1 of the Rules did not lead to automatic dismissal of a claim...

[20] Rule 7 (the 3 month rule) says ‘ if the initiating party fails to take action or file documents within 3 months of initiating proceedings , the case will be automatically closed and archived. The Registrar must however first give the initiating party 15 days notice in writing to rectify failing which the case will be closed and archived. These provisions are similar to Rule 69 (2) ‘the 6 month rule’ which relates to steps required to be taken by the initiating party after delivery of its statement of claim.

The applicant has argued that the Registrar erroneously applied the provisions of the 3 month rule to that of the 6 month rule and therefore the matter had already been automatically archived.

[21] This significant aspect was dealt with in the recent Labour Appeal Court judgment **Gololo v Limpopo Department Development Enviroment and Tourism and Others** ⁴

In determining the application of Rule 7 in dealing with Rule 69 (2) the court concluded

- in deference to the November judgment (supra) - as follows at paragraph 7 :

Paragraph 16.1 entitles the Registrar to archive a matter. In the current matter the Registrar did not do so. Since the matter had not been archived it remained alive and the Labour Court erred in finding that , without notice to the applicant it was deemed to have been withdrawn.

This is so because paragraph 16.1 does not provide that when the 6 month period has elapsed a matter is automatically dismissed or deemed to be withdrawn even if no steps have been taken by the Registrar and the applicant has received no notice of this. In finding differently the decision in November is wrong and in the current matter, the court a quo erred in making the order that it did.

And further at paragraph 12 :

The file in the current matter had not been archived by the Registrar, and there was no basis on which to infer that, despite this the matter was deemed to have been withdrawn.

[22] The above LAC judgment in Gololo above is instructive in this matter. in dealing with Labour Court Rule 69(2) - the so called 6 month rule - the judgment is emphatically clear on the question of whether the 6 month rule creates automatic archival or not .

[23] The judgment over turned the November judgment (supra) on this much debated question .

The court determined that as long as the Registrar has not actually archived the file the matter remains alive.

[24] In this matter it is agreed that the Registrar had not actually archived the file at the time of the applicants communication .

The file was therefore not archived automatically or otherwise at this stage .

[25] In line with the decision in Gololo (supra) this application therefore cannot succeed.

[28] COSTS

In the Constitutional Court decision in **Zungu v Premier of the Province of KZN and Others** ⁵ in which Zondo JP (as he was then) explained the Labour Courts position on costs.

“The rule of practice that costs follow the result does not govern the making of costs orders in this court. The relevant statutory provision is to the effect that orders of costs in this court are to be made in accordance with law and fairness...”.

I note that the delay with regard to the respondents compliance does not relate directly to the jurisdictional argument presented by the applicant party in this application. I note also that the applicants primary application and issue (whilst opposed) is with the conduct of the Registrar and not directly with the Respondents.

ORDER

1. The application to declare the respondent's referral (on 25 August 2017 under case number D1170/17) archived - in terms of Rule 69 (2) (b) of the Labour Court Rules or the Labour Court Practice Manual - is dismissed.
2. No order as to costs

MM Govender
Acting Judge of the Labour Court of South Africa

Appearances

Applicant:

Attorney L Masuku – CDH attorneys

Respondent:

Attorney Q Majam – MacGregor Erasmus Attorneys

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1. 2019 JOL 46069 (LC)
 2. 2022 43 ILJ 2727 (LAC)
 3. 2022 ZALCJHB 92
 4. 2025 46 ILJ 1895 LAC
 5. 2018 ZACC 1